IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

OFFICIAL ASSIGNEE'S REPORT DATED 11TH JANUARY,2005

IN

PETITION NO.100 OF 2002

Re:Pradeep K. Singh ..Insolvent.

Ex-parte:

Inder Raj Kapoor ..Petitioning Creditor.

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Mr.Kishore Jain i/b M/s.Mamta A. Shah for the Petitioning Creditor.

Mr.Sunil Bhakre for the Claimant.

Mr.K.B.Poojari, Official Assignee present.

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CORAM : DR.D.Y.CHANDRACHUD, J.

15th February, 2005.

P.C. :

1. The Official Assignee has moved this report for avoiding and setting aside an alleged transaction of sale in pursuance of the provisions of Section 55 of the Presidency Towns Insolvency Act, 1909. In order to appreciate the circumstances in which

this relief has been sought by the Official Assignee a few material facts would be in order.

2. An insolvency notice was issued on 1st July, 2002 on the basis of an award dated 23rd January, 2002. The notice was served on 22nd July, 2002. The act of insolvency was complete on the expiry of 35 days i.e. on 27th August, 2002. The Insolvency Petition was filed in this Court on 2nd September, 2002. The Insolvent sold the first of the two residential flats, Flat 103 to the Second Respondent on 9th October, 2002, and the second flat, Flat 102 was sold on 12th October, 2002. An order of adjudication was passed on 1st July, 2003. Subsequently on 1st October, 2003 the purchasers purported to give both the flats on leave and licence to the wife of the Insolvent together with furnitures and fixtures.

3. The circumstances surrounding the two transactions show that these are not bonafide transactions for value and without notice. The first agreement dated 9th October, 2002 is for a total consideration of Rs.5,81,000/-. Clause (1) of that agreement provides as follows :

> "1. That in pursuance of the said agreement the Transferor has received from the Transferee a sum of Rs.5,81,000/- (Rs. Five lakhs eighty one thousand only) in cash, in various instalments, being the full and final sale consideration, the receipt of which is hereby admitted and acknowledged by the Vendor before the witnesses." (emphasis supplied).

4. The second transaction is for a consideration of Rs.3,72,000/- and Clause (1) of the subsequent agreement dated 12th October, 2002 provides as follows:

> "1. That in pursuance of the said agreement the Transferor has received from the Transferee a sum of Rs.3,72,000/- (Rs.Three lakhs seventy two thousand only) in cash, in various instalments, being the full and final sale consideration, the receipt of which is hereby admitted and acknowledged by the Vendor before the witnesses."

5. Both these agreements with two separate

purchasers are remarkable, in that clause (1) of the agreement recites that the payment of consideration has been effected in cash. Moreover, the payment is stated to have been effected in "various instalments". There are no details of the alleged instalments. Moreover, what is even more remarkable is the circumstance that on 1st October, 2003 the purchasers purported to give the flat back to the wife of the Insolvent on leave and licence basis. Flat No.103 admeasuring 515 sq.ft. was alleged to have been given on leave and licence basis on a monthly consideration of Rs.3,000/- and Rs.10,000/- as security deposit, while Flat No.102 admeasuring 320 sq.ft. was given on a monthly consideration of Rs.2,000/- and Rs.10,000/- as security deposit.

6. Section 17 of the Presidency Town Insolvency Act, 1909 provides that on the making of an order of adjudication, the property of the insolvent shall vest in the Official Assignee. Under Section 51(a), the insolvency of a debtor relates back to the commission of an act of insolvency on which an order of adjudication is made. Section 55 lays down that any transfer of property not being a

transfer made before or in consideration of a marriage or made in favour of a purchaser or encumbrancer in good faith and for a valuable consideration, shall if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the Official Assignee. Ex-facie, the manner in which the consideration of Rs.5.81 lacs and Rs.3.72 lacs is stated to have been made in 'cash' in 'various instalments' shows that the transaction is anything but bonafide. The purchasers then purported to give the flat back on leave and licence to the wife of the Insolvent. The Insolvent has not appeared in these proceedings. Even before the order of adjudication was passed, the Petitioning Creditor had moved a Notice of Motion (N/M 115 of 2002) in Petition 102 of 2002 before this Court on 27th September, 2002. In paragraph 4 of the affidavit in support of the Notice of Motion a categoric averment had been made that the Debtor had contacted the Petitioning Creditor and had made an offer of settlement of the entire claim for a paltry sum and had stated that if this was not accepted, the Debtor would ensure that the Petitioning Creditor would not have the fruits of the insolvency proceedings and that he

would proceed to negotiate for the sale of the premises. The apprehension in paragraph 4 of the affidavit in support of that Motion has in fact been borne out by the transactions which have since taken place. Both the transactions are in close proximity having been entered into on 9th and 12th October, 2002. Even before this Court, counsel appearing on behalf of the purchasers has not been able to establish any means by which the alleged consideration was paid. In the circumstances, the report of the Official Assignee has to be made absolute and is accordingly made absolute in terms of prayer clauses (a), (b), (c) and (d). Until the Official Assignee takes possession, there shall be an order of injunction in terms of prayer clause (e), save and except for the words "dealing with".